



Lesson Five: Confidentiality

Method of Instruction: Lecture/Group Discussion/Learning Scenario

Total Time Allotted: 60 minutes

Media: Slides 22 – 31

Handouts: None

References: Army Regulation 600-20, Chapter 8 (Revised Final Draft – 12 September 2005). Available online at http://www.sexualassault.army.mil/files/Chapter%208_AR%20600-20_w%20App%20G-J_12%20Sept_05_FINAL%20DRAFT.pdf.

JTF-SAPR-009. Under Secretary of Defense Memorandum, “Confidentiality Policy for Victims of Sexual Assault,” March 16, 2005

Hagen, L. (25 April 2003). Advocates and Confidentiality. San Diego, CA: International Conference on Domestic Violence, Sexual Assault, and Stalking.

The Acting Secretary of the Army’s Task Force Report on Sexual Assault Policies (27 May 2004). Available online at [http://www.asamra.army.mil/eo/eo_docs/Army%20Report%20\(May%2027%202004\).pdf](http://www.asamra.army.mil/eo/eo_docs/Army%20Report%20(May%2027%202004).pdf).

Show Slide 22 (Lesson Title Slide)



Lesson Five

Confidentiality



1. **(5 minutes)** Inform the students of the overview and learning objectives.

Overview: Sexual assault is an underreported crime in society-at-large and in the military. In the *Army Sexual Assault Task Force* report, uniformed victims of sexual assault cited several reasons why they chose to forgo reporting incidents of sexual assault. One of the reasons expressed was the perceived lack of privacy and confidentiality.

This lesson will provide an overview of the Army's policy on confidentiality, the UVA's ethical responsibility to maintain confidentiality, and the limits/exceptions to confidentiality.

At the completion of this lesson, the UVA will be able to identify the victim's rights to confidentiality along with the limits/exceptions, as well as the UVA's responsibility in maintaining a victim's confidentiality as directed by the Army's policy on Sexual Assault Prevention and Response.

Show Slide 23 (Learning Objectives)



Learning Objectives:

- Define confidentiality and explain the importance of maintaining confidentiality
- Discuss limitations/exceptions to confidentiality



2. (20 minutes) Presentation

Show Slide 24 (What is Confidentiality?)



What is Confidentiality?

Confidentiality is perhaps the most fundamental principle of sexual assault services.

Victims have a **basic right** to expect information shared with the UVA will **not** be shared with others inappropriately or without the victim's knowledge or consent.

Note to instructor: Briefly review what confidentiality entails.

Background for Instructor:

Confidentiality means that the UVA must not discuss with friends, family members, nor even **other UVAs** any details of their interaction with the victim. The only exception to discussing a victim's case with another UVA is when a "warm hand-off" is initiated to transfer the victim's case. The UVA may be required to provide information to individuals with the "need to know" (e.g., medical personnel, legal personnel). Therefore, UVAs must not promise a victim that he/she will never release information.

The policy on confidentiality is found in JTF-SAPR-009. Under Secretary of Defense Memorandum, "Confidentiality Policy for Victims of Sexual Assault," March 16, 2005 and in Chapter 8, AR 600-20 (Revised Final Draft-7 July 2005)

Show Slide 25 (Importance of Confidentiality)



Importance of Confidentiality

UVAs should be aware of the importance of privacy and confidentiality to victims.

Victims need privacy for a number of very concrete reasons:

- It is essential to their recovery from the assault
- It is a way of protecting themselves from further assault (figurative and otherwise) by the perpetrator and others
- It is a way of containing the assault experience so that its impact does not invade every corner of their lives

Note to Instructor: Discuss the reasons why maintaining confidentiality is extremely important

Show Slide 26 (Reasons Victims Fear Breach of Confidentiality)



Reasons Victims Fear Breach of Confidentiality

Victims are in fear of:

- Stigma/shame
- Disciplinary action (collateral misconduct)
- Re-victimization
- Reaction of colleagues and/or commander
- Perceived operational impact (training, deployment, security clearance)

Note to instructor: Discuss the reasons why victims fear breach of confidentiality.



Background for Instructor:

Disclosure will be limited to that necessary to satisfy the purpose of the disclosure. Further disclosure will not be made unless the victim authorizes the disclosure in writing.

Improper disclosures by the UVA may result in:

- Discipline under UCMJ
- Loss of credentials
- Other adverse personnel or administrative action

Show Slide 27 (Exceptions to Confidentiality)



Exceptions to Confidentiality

Exceptions to confidentiality include occasions in which:

- A victim poses a danger to self or others
- Communication reveals imminent danger
- A victim requests that information be released to appropriate third parties, providers, officials or agencies. ***The UVA should always get written consent***
- A UVA is ordered/subpoenaed by military or civilian court
- A victim discloses information about the physical, emotional and/or sexual abuse of a child

Note to instructor: Review the situation in which confidentiality can be breached. Remind UVAs that any issues regarding confidentiality should be discussed with the SARC.



Background for Instructor:

If the UVA and the SARC have difficulty in resolving any issues regarding a victim's confidentiality and when the exceptions apply, they should contact the local Judge Advocate General's (JAG) office.

Victim privacy may be difficult to maintain in both restricted and unrestricted cases:

- Special arrangements may have to be made to transport a victim to a medical treatment facility, to be absent from his/her unit for a medical/forensic exam, and/or to be relocated or returned home
- Command may be more prone to ask the UVA or other first responder for information when such arrangements are made as they may conflict with mission readiness
- The identities of the UVAs are well-publicized, which may make it difficult for a victim to maintain privacy when seeking out advocacy services. Victims may fear that their privacy will be violated by talking to an advocate. The UVA should work with advocates to be creative in locating private locations to meet with victims (e.g., the mess hall during off-hours)
- Embedded reporters may be present with units and may become aware of the assault. The UVA should work with the victim to ensure that all unwanted media inquiries are deflected to the Public Affairs Officer (PAO) and/or the Command

Show Slide 28 (Challenges in a Deployed Environment)



Challenges in a Deployed Environment

- Victim privacy may be difficult to maintain in both restricted and unrestricted cases
- The UVA must be resourceful, flexible and creative in overcoming barriers that may exist in a deployed environment.



Read the statement: UVAs responding to victims in a deployed environment will likely face these and other challenges. It will be critical for the UVA to be resourceful, flexible, and creative in overcoming such barriers to ensure that program goals are fulfilled. Most importantly, the UVA should take every possible measure to protect victims' privacy and the integrity of restricted reports.

Background for Instructor:

At times, the Commander's obligations to ensure mission accomplishment and maintain good order and discipline within the Command may conflict with the UVA's responsibility to maintain confidentiality. Potential instances of conflict may include:

- The Command may request additional information about a restricted report of sexual assault if he/she becomes aware of the assault through an independent source
- The Command may seek additional information from the SARC when the SARC provides the non-identifying information in restricted cases
- In restricted cases, the Command may solicit information about a victim if he/she does not report for formation or is otherwise unable to perform his/her duties (e.g., victim is unable to deploy due to the assault)
- The Command's responsibilities to fulfilling mission readiness may conflict at times with a victim's interests (e.g., victim wanting to be relocated but victim is essential for mission readiness)
- In a deployed environment, there may be greater need for more information due to safety, logistics, etc. (e.g., it may be difficult to maintain victim's privacy if closest medical treatment facility is an hour away)



3. (35 minutes) Small Group Discussion.

Break group into groups of 4-8 to discuss learning scenarios involving confidentiality issues.

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Show Slide 29 - 30 (Learning Scenario #1)



A UVA is providing advocacy services to a male SGT who elected the restricted reporting option. He has expressed to the UVA his extreme concern for confidentiality because of his leadership position. He received a memo stating that due to a sexual assault on post, changes would be made regarding training. He immediately contacted the UVA and asked if anyone had notified his Command of the details of his assault. His assailant is civilian and the victim elected restricted reporting to ensure access to services. He was concerned that this incident might affect his career. He also didn't want his Soldiers to worry about him, thereby affecting mission readiness. He requested that the UVA discuss his case with his counselor because he didn't believe his counselor fully understood his situation. The UVA also receives a "hand delivered" letter from a civilian court stating that the UVA needs to appear in court as a witness in the case against a local civilian who is on trial for the sexual assault of an Active Duty male Soldier. The letter states that the UVA is required by law to testify.



Discussion Questions for Learning Scenario # 1

1. What challenges does the UVA face in this scenario?
2. Who does the UVA consult with to address concerns with confidentiality?
3. Will the UVA have to testify?
4. Can the UVA speak to the victim's counselor?
5. What needs to be done in order for the UVA to speak with the victim's counselor?



Note to instructor: The answers are in bold.

1. What challenges does the UVA face in this scenario?

The UVA faces challenges with confidentiality involving two different issues. The first issue is with the request to speak to the counselor and the second issue is with the letter from the civilian court.

The UVA should remind the victim that non-identifying information is provided in restricted cases.

2. Who does the UVA consult with?

The UVA should talk to the victim about the process of disclosing information to others.

The UVA should talk with the SARC and the office of the installation Judge Advocate in order to address the letter from the civilian court.

3. Will the UVA have to testify?

The UVA would testify based on the guidance received from JAG and if the UVA was subpoenaed.

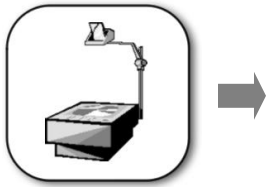
4. What needs to be done in order for the UVA to speak with the victim's counselor?

The UVA needs to obtain written consent from the victim in order to discuss the case with the counselor.

Show Slide 31 - 32 (Learning Scenario #2)



A 19-year old female Soldier has been seeing a UVA for the past two months for advocacy services. She has elected a restricted report because her assailant is her ex-boyfriend, who is also in her unit. The victim has reported to the UVA that she is extremely concerned for her safety because her assailant has made phone calls to her "threatening to kill her." The victim also reports not being able to sleep and is having anxiety attacks.



Discussion Questions for Learning Scenario # 2

1. What action needs to be taken in order to ensure the victim's safety?
2. Can the UVA break confidentiality in this case?
3. What referrals should be made to the victim?

Note to instructor: The answers are in bold.

1. What action needs to be taken in order to ensure the victim's safety?

The UVA needs to remind the victim that in a restricted report, a Military Protection Order cannot be granted; therefore, she needs to consider switching to an unrestricted report. If the victim resists, the UVA should contact the SARC to discuss safety concerns. The UVA and SARC should work with JAG and Command to ensure the victim is safe.

2. Can the UVA break confidentiality in this case?

Yes. This is an exception to confidentiality

3. What referrals should be made to the victim?

The UVA should make a referral for counseling.

Note to instructor: Following the small group discussion, reunite the small groups into large group and obtain feedback, questions, and concerns regarding learning scenarios.